U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under §§ 309 and 301 of the former Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Jamaica on October 18, 1967. The applicant's father was born in Georgia on January 12, 1921, and he was a U.S. citizen. He passed away in 1989. The applicant's mother was born in Jamaica and is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to §§ 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The district director concluded the applicant had failed to establish a blood relationship between herself and her father, as required by § 309 of the current Immigration and Nationality Act (the Act), 8 U.S.C. § 1409. The application was denied accordingly. The AAO finds that the application of § 309 of the current Act is incorrect, as "the applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born in 1967; therefore, §§ 301(a)(7) and 309 of the former Act apply to the present case. The applicant has nevertheless failed to establish eligibility under the applicable former statutes; hence, the district director's error was harmless.

On appeal, the applicant states that there is no age limit to an application for a certificate of citizenship. The AAO notes, however, that U.S. law imposes age limits within certain requirements for eligibility for derivative citizenship, as will be discussed below.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

> [A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years . . . .

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

In order to meet the definition of "child" prior to November 14, 1986, § 309 of the former Act required that paternity be established by legitimation while the child was under twenty-one. Subsequent amendments made to the Act in 1986, provided that a new section 309(a) would apply to persons who had not attained eighteen years of age as of the November 14, 1986, the date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. [redacted] Stat. 3655 (INAA). The amendments provided that the

former § 309(a) applied to any individual who had attained eighteen years of age as of November 14, 1986, and that former § 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See § 13 of the INAA, supra. See also § 8(r) of the Immigration Technical Corrections Act of 1988*, Pub. L. No. 100-525, 102 Stat. 2609.

In the present matter, the applicant was born prior to November 14, 1986 and was over the age of eighteen on November 14, 1986. Accordingly, the applicant must establish that she was legitimated by her father prior to her twenty-first birthday in 1988, under the law of the applicant's or her father's residence or domicile, as set forth in § 309(a) of the former Act. The record contains two birth certificates for the applicant, one lacking the father's data, and an amended version with her father's name and information. The birth certificate was not amended, however, until 1994, after the applicant's twenty-first birthday. The record also contains several letters attesting to the care and concern the applicant's father demonstrated toward her during his life. Unfortunately, however, the record does not include documentation to establish that the applicant's father legitimated her prior to her twenty-first birthday. She is therefore ineligible to derive U.S. citizenship from her father.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.